

~~Before the~~ COPY ORIGINAL

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

RECEIVED
DEC 21 1993FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Amendment of Section 73.202(b))

Table of Allotments)

FM Broadcast Stations)

(Fairview and Cambridge)

Springs, Pennsylvania, and)

North Kingsville, Ohio))

MM Docket 93-250

RM-8331

RM-8397

RM-8398

To: Acting Chief, Allocations Branch
 Policy and Rules Division
 Mass Media Bureau

REPLY COMMENTS

North Kingsville Broadcasting ("NKB"), by its counsel, hereby files its reply comments in the above-captioned proceeding. The Notice of Proposed Rule Making ("NPRM"), proposed the allotment of Channel 298A to Fairview, Pennsylvania, as its first local service, in response to a petition filed by KDC, Inc. NKB filed a counterproposal to allot Channel 298A to North Kingsville, Ohio, instead, as its first local service. In addition, Thomas J. Sauber ("Sauber") submitted a counterproposal to allot Channel 298A to Cambridge Springs, Pennsylvania, as its first local service. Each of the three proposals are mutually exclusive. On December 6, 1993, the Commission issued a Public Notice (Report No. 1989) announcing acceptance of the North Kingsville and Cambridge

No. of Copies rec'd
 List ABCDE

024

Springs counterproposals. NKB hereby files its reply reaffirming its support for the allotment of Channel 298A to North Kingsville.

1. As discussed in NKB's counterproposal, based on the comparative criteria as set forth in Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1992) and prior case law such as Bostwick and Good Hope, Georgia, 6 FCC Rcd 5796 (1991) the Commission would favor North Kingsville over Fairview for Channel 298A due to North Kingsville's larger population (2,672 versus 1,988). In its reply comments, KDC acknowledged that North Kingsville was the larger community and, with respect to that factor, should be the higher priority community. However, KDC attempted to diminish North Kingsville's need for a first local service because its population dropped 9% between 1980 and 1990. However, this decline is very small and North Kingsville's population is still 34% larger than that of Fairview. Past Commission case law clearly favors the larger community. See Bostwick and Good Hope, Georgia, supra and cases cited in NKB's counterproposal. KDC cites no case where the larger community was denied a first local service due to a small decline in population.

2. The population of Cambridge Springs (1,837) is even smaller than that of Fairview. Sauber does not attempt to argue that Cambridge Springs should be favored over North Kingsville for Channel 298A. Instead, Sauber offers Channel 241A to North

Kingsville as an alternate channel allotment. Sauber claims that Channel 241A is "superior" to the allotment of Channel 298A to North Kingsville. Apparently, Sauber believes that Channel 298A would require a directional antenna while Channel 241A would not.

3. NKB opposes the allotment of Channel 241A to North Kingsville because, in fact, Channel 241A is an inferior channel. Contrary to Sauber's belief, Channel 298A would not require a directional antenna. Operating as a 6 kW facility, Channel 298A would not overlap the vacant Welland or Stratford Canadian allotments. Therefore, Channel 298A would offer a full 6 kW Class A station to North Kingsville without a directional antenna. Nor would there be a short spacing to either the Welland or Stratford allotments using the Commission's Table for Canadian Class A spacings (for 3 kW) or the domestic 6 kW Class A spacings in Section 73.207. The actual distance between Welland and North Kingsville is 168.7 km; whereas the required Class A-A co-channel spacing under Section 73.207 is 115 km, a clearance of 53 km! The actual distance from North Kingsville to Stratford is 163 km. The same co-channel Class A-A distance of 115 km applies creating a clearance of 48 km if Channel 298A were allotted to North Kingsville for use as a 6 kW Class A station.

4. However, Channel 241A at North Kingsville is separated by only 125.7 km to Station CFPL-FM, London, Ontario, Canada, on

Channel 240C1. The first adjacent Class A-C1 spacing (treating the North Kingsville proposal as a 6 kW facility) is 133 km which would be short spaced by 7.3 km. Under the U.S.-Canada treaty, the spacing requirement for a 3 kW Class A to Class C1 first adjacent spacing requirement is 164 km. This spacing deficiency as a 3 kW Class A station would amount to nearly 40 km under the treaty! On the basis of the substantial spacing deficiencies pertaining to Channel 241A and the large area of clearance for Channel 298A, NKB strongly opposes the suggested alternative allotment proposal offered by Sauber.

5. NKB recognizes that Canada may indeed concur in the allotment of Channel 241A to North Kingsville (negotiated as a Class B1 channel) and that the Commission may indeed allot Channel 241A under its domestic spacing requirements. However, NKB believes that Channel 241A is an unacceptable channel which would severely limit the service area for a North Kingsville station. NKB hereby states that if Channel 241A were allotted to North Kingsville, it will not apply for that channel.

6. NKB's position on the inefficiency and inferiority of Channel 241A is further buttressed by the Commission's past pronouncements on the propagation of signals over bodies of water. For example, in Bay Shore, New York, 50 FR 10768 (1985) recons. denied, 59 RR 2d 1652 (1986), the Commission recognized that where the signal path extends primarily over water, the Commission's normal prediction method which incorporates a

terrain roughness factor would not adequately reflect the signal strength. In that case the Commission waived the principal community coverage rule where only 45% of the predicted 70 dBu signal would reach Bay Shore.

7. Here, the path from London to North Kingsville extends almost entirely over Lake Erie. The north shore area of Ohio would likely receive a much stronger signal than that predicted by the Commission's propagation model. In this regard, this area has a history of enhanced propagation due to ducting during certain times of the year. Thus, the impact of the London station's Class C1 signal extending over water would likely cause substantial interference to the northern Ohio area that would otherwise be served by a North Kingsville station operating on a first adjacent channel.

8. The Commission maintains strict allotment standards domestically and would not normally consider allocating such a grossly short spaced channel if the deficiency were to a domestic station. The Commission should not relax its standards and seek Canadian concurrence where the likelihood of interference domestically is so great. Recently, in the Commission's one-step application procedure, Amendment of the Commission's Rules to Permit FM Channel and Class Modifications by Application, 8 FCC Rcd 4735 (1993), the Report and Order rejected the suggestion of several parties that the Commission allow one-step upgrade applications based on contour protection

where the allotment would be short spaced. The Commission reasoned "that we do not intend that contour protection be used as an allotment tool" Id. at p. 4737.

9. However, here the Commission would be permitting a substandard allotment of Channel 241A without even affording contour protection where the signal from the London station would likely overlap land areas on the north shore of Ohio. NKB is interested in offering a first local service to North Kingsville but expects to be able to utilize a channel that will offer an equivalent 6 kW coverage area. Channel 298A would clearly serve that purpose. NKB is willing to apply for Channel 298A if allotted to North Kingsville. However, NKB is not interested in expending its resources on a grossly deficient channel such as Channel 241A which would offer far less coverage. Thus, should the Commission decide to allot Channel 241A, there is no expression of interest in that channel. As a result, the Commission would be effectively depriving North Kingsville, the more deserving community, of a first local service.

10. NKB believes the Commission should not compromise its allotment standards and place a substandard channel at North Kingsville for which there is no interest. Rather, North Kingsville's legitimate need for a first local service can be satisfied by allotting Channel 298A which can be fully utilized

Respectfully submitted,

NORTH KINGSVILLE BROADCASTING

By: Mark N. Lipp
Mark N. Lipp

Mullin, Rhyne, Emmons and Topel, P.C.
1000 Connecticut Avenue--Suite 500
Washington, D.C. 20036
(202) 659-4700

Its Counsel

December 21, 1993

ENGINEERING STATEMENT

The engineering data contained herein have been prepared on behalf of NORTH KINGSVILLE BROADCASTING ("NKB") in support of its Reply Comments in MM Docket No. 93-250, as specified in the Commission's Public Notice of December 6, 1993.

NKB has proposed that Channel 298A be allotted to North Kingsville, Ohio, rather than to Fairview, Pennsylvania, because North Kingsville is the larger community. In so doing, NKB recognized that it would not meet the required spacing to an allotment in Welland, Ontario, but would provide contour protection, as suggested in the *Notice of Proposed Rule Making* in this proceeding.

It has now been proposed that Channel 241A instead of Channel 298A be allotted to North Kingsville. In partial support of this proposal, it is suggested that Channel 241A could be used in North Kingsville as a 6 kw nondirectional facility. However, this argument is misleading.

As shown in the NKB Comments, Channel 298A in North Kingsville would be spaced 168.67 kilometers from Channel 298A, Welland, whereas the required spacing is 180 kilometers, for a shortage of 11.33 kilometers. However, nondirectional 6 kw Class A facilities could be established at the reference points for the two communities, and the service and interfering contours would not only not overlap each other, but there would be a gap of 17.4 kilometers between the two.

On the other hand, as shown in the attached tabulation, a North Kingsville facility on Channel 241A would be only 125.71 kilometers from super-powered CFPL-FM on Channel 240C1 in London, Ontario. Since the required separation from CFPL-FM is 181 kilometers, the shortspacing is 55.29 kilometers, a much more severe encroachment than the Channel 298A shortage. Further, the CFPL-FM interfering contour would overlap the normally protected contour of a 6 kw North Kingsville facility by at least 43 kilometers. With the propagation path from CFPL-FM being entirely over water, and with the history of enhanced propagation due to temperature inversions over the Great Lakes, it is anticipated that a station on Channel 241A in North Kingsville would be subject to objectionable interference from a Canadian facility, which would not be the case if it were operating on Channel 298A.

Thus, Channel 241A is not equivalent to Channel 298A, and NKB should not be required to accept an inferior allotment.

I declare under penalty of perjury that the foregoing statements and the attached tabulation are true and correct to the best of my knowledge and belief.



NEIL M. SMITH

December 21, 1993

Study Name : 241 - N. KINGSVILLE
 Channel : 241A
 Coordinates : N 41 54 18.0 W 80 41 36.0
 Separations : FM Zone 1 - Commercial

Call	City	&	State	Stat	File - number	Chan	ERP	HAAT	Zn	Latitude	Longitude	Bear	Dist	Req'd	Clear	Notes
--- kilometers ---																
WCLV	CLEVELAND		OH	LIC	BLH 871207KD	238B	31.0	620	1	41 26 32.0	81 29 28.0	232.4	84.00	69.0	15.00	CLOSE
WPIG	OLEAN		NY	LIC	BLH 4110	239B	43.0	740	1	42 2 8.0	78 26 47.0	84.8	186.82	69.0	117.82	
WNPD	NEW PHILADELPHIA		OH	LIC	BLH 900814K6	240A	2.00	398	1	40 35 51.0	81 29 32.0	204.9	159.90	72.0	87.90	Comment
WNPD	NEW PHILADELPHIA		OH	APP	BMPH 900424IE	240A	2.61	499	1	40 35 51.0	81 29 32.0	204.9	159.90	72.0	87.90	Comment
D87-433	BROOKVILLE		PA	PDEL	RM 5994	240A			1	41 7 25.0	79 3 30.0	122.0	161.74	72.0	89.74	
WMKX	BROOKVILLE		PA	LIC	BLH 871028KF	240A	1.80	419	1	41 7 21.0	79 3 51.0	122.1	161.40	72.0	89.40	
WHTX	SHARPSVILLE		PA	LIC	BLH 850912KA	240A	3.00	328	1	41 13 5.0	80 33 43.0	171.8	77.08	72.0	5.08	CLOSE
WHTX	SHARPSVILLE		PA	APPM	BPH 900517IE	240A	6.00	328	1	41 13 5.0	80 33 43.0	171.8	77.08	72.0	5.08	CLOSE c
CFPLFM	LONDON		ON	LIC		240C1	380	885	1	42 57 15.0	81 15 58.0	338.2	125.71	181.0	-55.29	SHORT c
WHNN	BAY CITY		MI	LIC	BLH 920211KB	241C	100	1020	2	43 33 10.0	83 41 24.0	307.8	306.17	226.0	80.17	Comment
WJYE	BUFFALO		NY	LIC	BLH 6053	241B	50.0	480	1	42 53 10.0	78 52 25.0	53.3	185.27	178.0	7.27	CLOSE
NEW	HURON		OH	APPG	BPH 870415MD	241A	3.00	328	1	41 20 51.0	82 29 18.0	248.0	161.90	115.0	46.90	Comment
NEW	HURON		OH	APPD	BPH 870327KA	241A	3.00	328	1	41 18 10.0	82 31 57.0	247.0	167.28	115.0	52.28	Comment
NEW	HURON		OH	APPD	BPH 870410KC	241A	3.00	328	1	41 22 50.0	82 38 37.0	250.9	172.61	115.0	57.61	Comment
NEW	HURON		OH	APPD	BPH 870331OB	241A	3.00	328	1	41 20 51.0	82 29 18.0	248.0	161.90	115.0	46.90	Comment
DBO-90	HURON		OH	ALC		241A			1	41 23 36.0	82 33 18.0	250.4	165.17	115.0	50.17	Comment
WVTY	PITTSBURGH		PA	LIC	BLH 920206KC	241B	44.0	522	1	40 23 49.0	79 57 43.0	159.7	178.38	178.0	.38	CLOSE c
WHYT	DETROIT		MI	LIC	BLH 861112KB	242B	20.0	786	1	42 27 13.0	83 9 50.0	287.5	213.02	113.0	100.02	
WKBW	OIL CITY		PA	LIC	BLH 920921KD	242A	6.00	328	1	41 23 45.0	79 39 53.0	123.2	102.67	72.0	30.67	
CINGFM	BURLINGTON		ON	APP		242C1	75.0	656	2	43 35 20.0	79 52 54.0	19.2	198.51	181.0	17.51	
	BURLINGTON		ON	ALC		242C1			2	43 35 20.0	79 52 54.0	19.2	198.51	181.0	17.51	Comment
	HAMILTON		ON	PDEL		242A			1	43 15 .0	79 51 .0	24.5	164.67	113.0	51.67	
	HAMILTON		ON	ALC		242A			1	43 15 .0	79 51 .0	24.5	164.67	113.0	51.67	Comment
	MISSISSUAGA		ON	PADD		242A			1	43 35 42.0	79 38 6.0	24.3	206.77	113.0	93.77	Comment
MCBA	FREDONIA		NY	LIC	BLH 890406KA	243A	0.66	686	1	42 22 2.0	79 23 12.0	64.1	119.61	31.0	88.61	Comment
WKDD	AKRON		OH	LIC	BLH 7094	243B	50.0	440	1	41 12 5.0	81 31 25.0	221.7	104.43	69.0	35.43	
WLLF	MERCER		PA	LIC	BLH 871130KD	244A	1.40	484	1	41 18 43.0	80 16 39.0	152.2	74.43	31.0	43.43	
	KITCHENER		ON	PADD		244C1	100	655	1	43 24 15.0	80 38 5.0	1.6	166.60	92.0	74.60	
CKGLFM	KITCHNER		ON	LIC		244B	24.0	658	1	43 24 15.0	80 38 5.0	1.6	166.60	71.0	95.60	
	LEAMINGTON		ON	ALC		244A			1	42 6 46.0	82 39 52.0	278.7	164.91	54.0	110.91	Comment
WNKS	BEAVER FALLS		PA	LIC	BLH 6781	294B	47.0	520	1	40 44 16.0	80 17 47.0	165.5	133.82	15.0	118.82	
NEW	LAKESWOOD		NY	APP	BPH 930525MD	295B1	25.0	328	1	42 0 30.0	79 16 23.0	83.9	118.31	12.0	106.31	
NEW	LAKESWOOD		NY	APP	BPH 930528MC	295B1	25.0	328	1	41 58 5.0	79 16 25.0	86.1	117.95	12.0	105.95	
NEW	LAKESWOOD		NY	APP	BPH 930527MG	295B1	25.0	328	1	42 0 30.0	79 16 23.0	83.9	118.31	12.0	106.31	
NEW	LAKESWOOD		NY	APP	BPH 930527ME	295B1	25.0	328	1	42 0 33.0	79 16 25.0	83.9	118.27	12.0	106.27	
NEW	LAKESWOOD		NY	APP	BPH 930527MH	295B1	5.20	715	1	41 57 31.0	79 16 11.0	86.6	118.23	12.0	106.23	
	LAKESWOOD		NY	ALC		295B1			1	42 0 54.0	79 17 38.0	83.5	116.66	12.0	104.66	Comment
WRQK-FM	CANTON		OH	LIC	BLH 1822	295B	27.5	340	1	40 49 17.0	81 25 34.0	207.2	135.06	15.0	120.06	
WUVU	CLAREDON		PA	CP	BPH 920306MA	295A	4.70	371	2	41 48 50.0	79 10 4.0	94.1	127.08	10.0	117.08	
CIXXFM	LONDON		ON	LIC		295A	3.00	125	1	43 1 .0	81 12 4.0	341.5	130.36	16.0	114.36	

End of Study


CERTIFICATE OF SERVICE

I, Veronica Abarre, a secretary in the law firm of Mullin, Rhyne, Emmons and Topel, P.C., do hereby certify that I have this 21st day of December, 1993, caused to be mailed by first class mail, postage prepaid, copies of the foregoing "**REPLY COMMENTS**" to the following:

* Ms. Leslie K. Shapiro
Allocations Branch
Mass Media Bureau
Federal Communications Commission
2025 M Street, N.W.--Room 8324
Washington, D.C. 20554

Allan G. Moskowitz, Esq.
Kaye, Scholer, Fierman,
Hays & Handler
The McPherson Building
901 Fifteenth Street, N.W.
Suite 1100
Washington, D.C. 20005-2327
(Counsel to KCD, Inc.)

Robert W. Healy, Esq.
Smithwick & Belendiuk, P.C.
1990 M Street, N.W.--Suite 510
Washington, D.C. 20036
(Counsel to Thomas J. Sauber)


Veronica Abarre

* Hand Delivered